

Date Mailed
July 16, 1998

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

In the Matter of Proposed Emergency Revision of Chapter PSC 4,
Wis. Adm. Code—Environmental Analysis

1-AC-179

**NOTICE OF ADOPTION OF EMERGENCY RULES BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

NOTICE OF EMERGENCY RULE HEARING

Hearing Date:	Tuesday, August 4, 1998, 9:00 a.m.
Hearing Location:	Public Service Commission 610 North Whitney Way Madison, Wisconsin
Comments Due: August 18, 1998 – Noon	Address Comments To: Lynda L. Dorr Public Service Commission P.O. Box 7854 Madison, WI 53707-7854
FAX Due Date: August 17, 1998 – Noon	

On July 14, 1998, the Public Service Commission adopted an emergency rule amending s. PSC 4.30 (4) (a) and (5) (a) and (b), Wis. Adm. Code. These amendments relate to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days. A copy of the emergency rule is attached.

NOTICE IS GIVEN that a public hearing will be held with respect to this emergency rule in the Amnicon Falls Hearing Room, Public Service Commission, 610 North Whitney Way, Madison, Wisconsin 53705, on Tuesday, August 4, 1998, at 9:00 a.m. This building is accessible to people in wheelchairs through the Whitney Way main floor entrance (lobby). Parking for people with disabilities is available along the south side of the building. Any party with a disability who needs accommodations should contact Richard Teslaw at (608) 267-9766.

The record in this proceeding will be held open until Tuesday, August 18, 1998, for receipt of any written comments. Written comments should be submitted to Lynda L. Dorr,

Secretary to the Commission, Public Service Commission of Wisconsin, P.O. Box 7854,
Madison, Wisconsin 53707-7854.

All written filings must be received at the Commission by noon of the day that the filing is due. Any faxed material must be received at the Commission by noon of the day before the due date.

Analysis Prepared by the Public Service Commission

Statutory authority: ss. 196.02 (1) and (3), 227.11 and 227.24, Stats.

Statute interpreted: s. 1.11, Stats., and 1997 Wis. Act 204 Section 96 (1).

The Wisconsin Environmental Policy Act (WEPA) requires that all state agencies carefully examine the environmental consequences of major actions that significantly affect the quality of the human environment. Part of that examination includes the preparation of an environmental impact statement (EIS).

The Commission has implemented rules to administer its obligations under WEPA. These rules require preparation of a draft EIS, a preliminary evaluation of the environmental impacts associated with a proposed action. The Commission's rules prescribe that copies of the draft EIS must be distributed widely, and that the public must be notified of the draft EIS's availability. The Commission allots at least a 45-day period for receipt of comments from the public, unless it shortens the review period for cause. The Commission then prepares a final EIS, modifying its draft EIS as a result of comments received or other information it collects. The Commission also distributes its final EIS to a large group of interested persons. The Commission holds a public hearing on each proposed action for which it has prepared a final EIS. Under current rules, the public is allowed at least a 30-day period to review the final EIS, because the Commission issues a notice of the hearing and delivers copies of the final EIS at least 30 days before the hearing is scheduled. The Commission may shorten the 30-day period for cause. Notice of the hearing is delivered by mail to known interested persons and is published in local newspapers.

Recent changes in state law have significantly shortened the time available to the Commission to complete its review of certain major actions. Under s. 196.491, Stats., large electric generating facilities cannot be built in Wisconsin unless the Commission issues a Certificate of Public Convenience and Necessity (CPCN). 1997 Wisconsin Act 204, Section 96 (1), requires Madison Gas and Electric Company, Wisconsin Power and Light Company, and Wisconsin Electric Power Company each to complete their bidding processes and select a winning bid for the construction of new electric generating plants by July 31, 1998. This session law requires each winning contractor to submit a CPCN application to the Commission by August 31, 1998, and requires the Commission to complete its review of these applications within 90 days. Under Commission rules, an EIS must be prepared for each of these projects.

The requirement that final action on a bidder's CPCN application be taken within 90 days makes it impossible for the Commission to perform all the steps it would ordinarily undertake to complete its review. Preparation and publication of a draft EIS, issuing a notice of its availability and the 45-day review period consume much of the time involved in reviewing a CPCN application. These elements of the Commission's process are designed to broaden public understanding of utility projects and encourage public input into the Commission's review, but they are not required by law. The Commission cannot prepare a draft EIS and also perform its legally required duties (produce and distribute a final EIS, conduct hearings on the project, accept post-hearing briefs, and issue a decision) in 90 days. The Commission therefore proposes to amend its rules so that it will prepare a final EIS, without first issuing a draft EIS, when conducting its 90-day review of CPCN applications from the winning bidders.

Fiscal Estimate

1997 Wisconsin Act 204 requires that three utilities complete their RFP bidding processes by the summer of 1998, and that the Commission review the winning bidders' electric generating plant projects within 90 days after complete project applications are filed. This law accelerates the normal process of developing and reviewing such projects, but the Commission's existing appropriations and staff levels are sufficient to handle the increased workload associated with this shorter timeline. No fiscal impact of the emergency rule is expected on state or local units of government.

Initial Regulatory Flexibility Analysis

This emergency rule will have no significant adverse impact on small businesses.

Environmental Analysis

This is a Type III action under s. PSC 4.10 (3), Wis. Adm. Code. No unusual circumstances suggesting the likelihood of significant environmental consequences have come to the Commission's attention. Neither an environmental impact statement under s. 1.11, Stats., nor an environmental assessment is required.

Statement of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

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Contact Persons

Any questions regarding the hearing or other procedures may be directed to Donna Paske, Hearing Examiner, at (608) 266-7173. Other questions regarding this matter may be directed to Kathleen Zuelsdorff, Commission Environmental Analyst, at (608) 266-2730, or to Commission Attorney David Ludwig at (608) 266-5621. Copies of the emergency rule may be obtained from the Commission, at no charge, by contacting Gail Hanson, Electric Division, at (608) 267-2896.

Dated at Madison, Wisconsin, _____

For the Commission.

Susan E. Stratton
Administrator
Electric Division

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EMERGENCY RULES

SECTION 1. PSC 4.30 (4) (a) and (5) (a) and (b) are amended to read:

PSC 4.30 (4) (a) A draft EIS is a preliminary document, clearly describing a proposed project and the alternatives being considered so that other persons can begin assessing the environmental effects of the proposal. A draft EIS is not required for projects specified in 1997 Wis. Act 204, Section 96 (1).

(5) (a) Following the public review period on a draft EIS, the commission staff shall prepare a final EIS. The final EIS may vary from the draft EIS in scope, based on comments received on the draft EIS or other pertinent information which becomes known to the commission staff. The final EIS shall contain the information described in sub. (3). For projects specified in 1997 Wis. Act 204, Section 96 (1), a draft EIS will not precede the final EIS.

(b) The commission shall distribute a copy of the final EIS to the ~~same persons who received a copy of the draft EIS under~~ listed in sub. (4) (c), and to any other person who requested a copy of the draft EIS or commented on the draft EIS.

SECTION 2. EFFECTIVE DATE. As provided in s. 227.24 (1) (c), Stats., the rules contained in this emergency order take effect upon publication in the official state newspaper.

(End)